

Appl. No. 10/765,028  
Response dated September 28, 2006  
Reply to Office action of September 15, 2006

### **REMARKS**

Applicant respectfully requests entry of this Amendment and reconsideration of this application, as amended. Claims 1, 2, 12-16, 19-24, 27-29, 31-45, 47-55, and 57 have been rejected. Claims 3-11, 17, 18, 25-26, 30, and 46 have been withdrawn. Claim 56 has been canceled. Independent claims 1, 44, 50, 51, and 57 have been amended to recite both a vertical common central axis and said first and second flat sides being arranged at an obtuse angle relative to each other. Support for this amendment can be found in the Figures. Claims 15, 19-24, 27-29, 31-36, and 38-42 have also been amended.

### **Restriction/Election of Species**

Applicant strongly disagrees with the withdrawal of claims 3-5, 25-26, and 30 as reading "on a non-elected specie of figure 6A as the specie to figure 6A has the splice panel," as stated by the Examiner, and requests reconsideration. The Examiner must point out specifically what in claims 3-5, 25-26, and 30 precludes the claims from reading on the elected species. The Examiner has only pointed out that claims 3-5, 25-26, and 30 also appear to read on a non-elected species. Further, the claims clearly read on the elected species of Figure 5A since they recite features which are structural and positively set forth in all the claims. Accordingly, claims 3-5, 25-26, and 30 should be examined on the merits. Furthermore, claims 3-5, 25-26, and 30 can read on multiple species at the same time, as long as claims 3-5, 25-26, and 30 read on the elected species. Claim 56, directed to a method for constructing a structure, has been canceled in order to advance prosecution.

### **Objection**

The drawings are objected to because they fail to show the limitations of claims 12-13 as described in the specification. The drawings will be amended upon indication of allowable subject matter.

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Rejection Under 35 U.S.C. §112.

Claims 15, 20-24, 27-29, and 31-41 have been rejected under 35 U.S.C. 112, second paragraph. Claim 15 has been amended to delete the term "additional." The preambles of claims 20-24, 27-29 and 31-36 and 38-41 have been amended according to the Examiner's suggestions. The term "said wall panels" in claim 20 finds direct antecedent basis in the term "wall panels" in claim 19, from which it depends. Accordingly, there appears to be no confusion. Claims 31, 34 and 42 have been also amended according to the Examiner's suggestions.

In view of the above, withdrawal of the rejections is respectfully requested.

Rejection Under 35 U.S.C. §102

Claim 50 has been rejected under 35 U.S.C. §102(b) as being anticipated by GB 1033890 (Meusienne). Figures 7a and 7b of Meusienne show a frame structure made up of four angle members of equal length about a common edge line 215, the angle members being staggered in a similar manner to Figures 6a or 6b so as to be able to interlock with an identically constituted assembly.

Claim 50 (currently amended) recites that each of the legs comprises a first flat side and a second flat side being arranged at an obtuse angle relative to each other. Clearly Figure 7b of Meusienne, which the Examiner relies on, shows angle members with right angles, not obtuse. Since Meusienne fails to disclose all of Applicants' recited limitations, Meusienne cannot anticipate Applicant's presently claimed invention. Thus, the reference lacks the positive recitation required of an anticipating reference. Removal of the rejection is respectfully requested. Furthermore, all the rejections involving Meusienne, both under 35 U.S.C. §102 and 35 U.S.C. §103 are respectfully traversed.

Rejection Under 35 U.S.C. §103

Claims 1-2, 12-13, 37, 42-44, and 50 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,218,859 (Sams) in view of U.S. Patent No. 4,248,025 (Kleine) and GB 1033890 (Meusienne).

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Independent claim 1 (currently amended), independent claim 44 (currently amended), and independent claim 50 (currently amended) recite both a vertically oriented common central axis and a plurality of column panels comprising a first flat side and a second flat side being arranged at an obtuse angle relative to each other. Claims 2, 12-13, 37, 42, and 43 depend from independent claim 1.

In this rejection as well as the remaining rejections under 35 U.S.C. §103 involving Sams, Meusienne appears to be relied on more as a primary reference than Sams, teaching that a plurality of angle members can be aligned in a first horizontal array about a vertically oriented central axis, rather than as secondary reference. However, Meusienne does not show a plurality of angle members wherein each angle member has the first flat side oriented at an obtuse angle from the second flat side, as now recited in each of Applicant's independent claims.

Furthermore, there is no motivation or suggestion to combine Sams, Meusienne, and Kleine, in the manner suggested by the Examiner. Nor, do any of the references provide any evidence to suggest the proposed combination. The column panels in Sams do not appear to be aligned along a vertically oriented common central axis, while they are in Meusienne. Kleine does nothing to remedy the defects of Sams and Meusienne.

Claims 14-16, 19, 24, 27-31, 33-36, 47-49, 51-55, and 57 have been rejected under 35 U.S.C. §103 (a) as being unpatentable over U.S. Patent No. 4,218,859 (Sarns) in view of U.S. Patent No. 4,248,025 (Kleine) and GB 1033890 (Meusienne) as applied to claims 1 or 44 above and further in view of U.S. Patent No. 3,327,870 (Fairchild). Claims 14-16, 19, 24, 27-31, and 33-36 depend from independent claim 1. Claims 47-49 depend from independent claim 44. Claims 52-55 depend from independent claim 51.

Independent claim 1 (currently amended), independent claim 44 (currently amended), independent claim 51 (currently amended), and independent claim 57 (currently amended) all recite both a vertically oriented common central axis and a plurality of column panels (legs) comprising a first flat side and a second flat side being arranged at an obtuse angle relative to each other.

Again, in this rejection under 35 U.S.C. §103, Meusienne appears to be is relied on more as a primary reference in teaching that a plurality of angle members can be aligned in a first

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horizontal array about a vertically oriented central axis, rather than as secondary reference. However, Meusienne does not show a plurality of angle members wherein each angle member has the first flat side oriented at an obtuse angle from the second flat side, as now recited in each of Applicant's independent claims.

And again, there is no motivation or suggestion to combine Sams, Meusienne, Kleine, and Fairchild, in the manner suggested by the Examiner. Nor, do any of the references provide any evidence to suggest the proposed combination. The column panels in Sams do not appear to be aligned along a vertically oriented common central axis, while they are in Meusienne. Fairchild does nothing to remedy the defects of Sams, Kleine, and Meusienne.

Claim 20 has been rejected under 35 U.S.C. §103 (a) as being unpatentable over U.S. Patent No. 4,218,859 (Sams) in view of U.S. Patent No. 4,248,025 (Kleine), U.S. Patent No. 3,327,870 (Fairchild) and GB 1033890 (Meusienne) as applied to claim 19 above and further in view of U.S. Patent No. 1,250,685 (Smith). Claim 20 depends from independent claim 1.

As previously noted, there is no disclosure in Sams, Kleine, Meusienne, and/or Fairchild as to a plurality of column panels arrayed about a vertically oriented common central, each of said panels comprising a first flat side and a second flat side, said first and second flat sides being arranged at an obtuse angle relative to each other. Smith does nothing to remedy the defects of Sams, Kleine, Meusienne, and Fairchild.

Claim 21 has been rejected under 35 U.S.C. §103 (a) as being unpatentable over U.S. Patent No. 4,218,859 (Sams) in view of U.S. Patent No. 4,248,025 (Kleine), U.S. Patent No. 3,327,870 (Fairchild) and GB 1033890 (Meusienne) as applied to claim 19 above and further in view of U.S. Patent No. 3,382,633 (Wilson). Claim 21 depends from independent claim 1.

Similar to Applicant's arguments against the rejection of claim 20, there is no disclosure in Sams, Kleine, Meusienne, and/or Fairchild as to a plurality of column panels arrayed about a vertically oriented common central axis, each of said panels comprising a first flat side and a second flat side, said first and second flat sides being arranged at an obtuse angle relative to each other. Wilson does nothing to remedy the defects of Sams, Kleine, Meusienne, and Fairchild.

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Claims 1, 14, 19, 22-24, 27-28, 42-43, 44-45, 47, 49-55, and 57 have been rejected under 35 U.S.C. §103 (a) as being unpatentable over U.S. Patent No. 3,374,593 (Rensch) in view of U.S. Patent No. 4,248,025 (Kleine) and GB 1033890 (Meusienne).

Independent claim 1 (currently amended), independent claim 44 (currently amended), independent claim 50 (currently amended), independent claim 51 (currently amended), and independent claim 57 (currently amended) recite both a vertically oriented common central axis and a plurality of column panels (legs) comprising a first flat side and a second flat side being arranged at an obtuse angle relative to each other.

In this rejection as well as the remaining rejections under 35 U.S.C. §103 involving Rensch, Meusienne appears to be is relied on more as a primary reference than Rensch, teaching that a plurality of angle members can be aligned in a first horizontal array about a vertically oriented central axis, rather than as secondary reference. However, Meusienne does not show a plurality of angle members wherein each angle member has the first flat side oriented at an obtuse angle from the second flat side, as now recited in each of Applicant's independent claims.

Furthermore, there is no motivation or suggestion to combine Rensch, Meusienne, and Kleine, in the manner suggested by the Examiner. Nor, do any of the references provide any evidence to suggest the proposed combination. The column panels in Rensch do not appear to be aligned along a vertically oriented common central axis, while they are in Meusienne. Kleine does nothing to remedy the defects of Rensch and Meusienne.

Claims 32 and 48 have been rejected under 35 U.S.C. §103 (a) as being unpatentable over U.S. Patent No. 4,218,859 (Sams) in view of U.S. Patent No. 4,248,025 (Kleine) and GB 1033890 (Meusienne).as applied to claims 14 or 47 above and further in view of U.S. Patent No. 4,338,752 (Stanelle). Claim 32 depends from independent claim 1 and claim 48 depends from independent claim 44.

There is nothing in the disclosures of Sams, Kleine, and/or Meusienne as to a plurality of column panels arrayed about a vertically oriented common central axis, each of said panels comprising a first flat side and a second flat side, said first and second flat sides being arranged at an obtuse angle relative to each other. Stanelle does nothing to remedy the defects of Sams, Kleine, and Meusienne.

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Claims 37-38, and 40-41 have been rejected under 35 U.S.C. §103 (a) as being unpatentable over U. S. Patent No. 3,374,593 (Rensch) in view of U.S. Patent No. 4,248,025 (Kleine) and GB 1033890 (Meusienne) as applied to claim 1 above and further in view of U.S. Patent No. 638,280 (Robinson). Claims 37-38 and 40-41 depend from independent claim 1.

Robinson, like Stanelle, does nothing to remedy the defects of Rensch, Kleine, and Meusienne. There is nothing in the disclosures of Rensch, Kleine, and/or Meusienne as to a plurality of column panels arrayed about a vertically oriented common central axis, each of said legs comprising a first flat side and a second flat side, said first and second flat sides being arranged at an obtuse angle relative to each other.

Claim 39 has been rejected under 35 U.S.C. §103 (a) as being unpatentable over U.S. Patent No. 3,374,593 (Rensch) in view of U.S. Patent No. 4,248,025 (Kleine), U.S. Patent No. 638,280 (Robinson) and GB 1033890 (Meusienne). Claim 39 depends from independent claim 1.

Again, Robinson does nothing to remedy the defects of Rensch, Kleine, and Meusienne. Note, the same combination of references was also used to reject claims 37-38 and 40-41 above.

It is difficult, if not impossible, to imagine how one skilled in the art in possession of all these references could conceive of the present invention absent hindsight reconstruction which was prohibited by the Supreme Court in *Diamond Rubber Co. v. Consolidated Rubber Tire Co.*, 220 U.S. 428 435-436 (1911). To find obviousness, "there must be some reason for the combination other than the hindsight gleaned from the invention itself." *Interconnect Planning Corp. v. Feil*, 227 U.S.P.Q. 543, 551 (Fed. Cir. 1985). Stated in another way, "[I]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch* 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992).

Given the foregoing shortcomings of Meusienne, Sams, Kleine, Fairchild, Smith, Wilson, Rensch, Stanelle, and Robinson, it is respectfully submitted that the references fail to disclose or suggest the invention of claims 1, 2, 12-16, 19-24, 27-29, 31-45, 47-55 and 57. Accordingly, withdrawal of the rejections under 35 U.S.C. §112, 35 U.S.C. §102 (b) and 35 U.S.C. §103(a) is respectfully requested.

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Applicant has made an earnest effort to place their application in proper form and to distinguish their claimed invention from the applied prior art. In view of the foregoing remarks, it is respectfully submitted that the present claims describe a structural column that meets the requirements of patentability. Applicant therefore respectfully requests that a timely Notice of Allowance be issued in this case.

Any comments or questions concerning the application can be directed to the undersigned at the telephone number given below.

Respectfully submitted,



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